

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**MAURICE L. MILLER,**

**Defendant.**

**CASE NO. 8:07CR192**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) in this case. The parties have not objected to the PSR. The government adopted the PSR. (Filing No. 30.) The Court has also received the Defendant’s motion for downward departure based on overstatement of criminal history and the November 1, 2007, change in the guidelines as they relate to crack cocaine offenses (Filing No. 29). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

Regarding the motion for downward departure, the issue regarding the recent amendments to the sentencing guidelines is denied as moot. The Court intends to sentence in accordance with the November 1, 2007, guidelines as reflected in the sentencing recommendation. The motion will be heard at sentencing insofar as it regards the alleged overstatement of criminal history.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant's motion for downward departure (Filing No. 29) is denied as moot insofar as the motion regards the recent amendments to the guidelines, and the remaining issue regarding the alleged overstatement of criminal history will be heard at sentencing.

DATED this 20<sup>th</sup> day of November, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge